

Message

From: Walker, Mary [walker.mary@epa.gov]
Sent: 8/24/2017 6:40:23 PM
To: McGill, Thomas [McGill.Thomas@epa.gov]; Mancusi-Ungaro, Philip [Mancusi-Ungaro.Philip@epa.gov]
CC: Zapata, Cesar [Zapata.Cesar@epa.gov]; Able, Tony [Able.Tony@epa.gov]
Subject: RE: Talking points and background for the 404 briefing

Thank you all. All of this is helpful material. I am working on this now – so timing is great!

From: McGill, Thomas
Sent: Thursday, August 24, 2017 2:31 PM
To: Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov>; Walker, Mary <walker.mary@epa.gov>
Cc: Zapata, Cesar <Zapata.Cesar@epa.gov>; Able, Tony <Able.Tony@epa.gov>
Subject: RE: Talking points and background for the 404 briefing

Mary – Below in red text are some draft talking points to accompany Slide 7. The black text below is the text of the slide. If you would like this in a different format, have questions, or need additional information please let me know. Tom

404 Permitting in FL

- **Significant 404 permitting activity**
 - o In FY2016, the Jacksonville District, which covers the entire state of FL, issued more individual 404 permits than any other Corps District (38 Districts across the Nation).
 - o The actual percentage of permits issued relative to the national total depends on whether you use EPA's database (7% of total individual permits in FY2016) or the Corps' database (18% of total of individual permits).
 - o Approximately 6% of the nation's approved mitigation banks are in FL.
 - o The acreage of restoration areas of approved mitigation banks in FL represents 18% of the national total.
- **8,436 miles of coastline**
 - o 2nd only to Alaska
- **26,000 stream/river miles**
- **11.4 million acres of wetlands**
 - o 27% of the area of the state

From: Mancusi-Ungaro, Philip
Sent: Thursday, August 24, 2017 8:27 AM
To: Walker, Mary <walker.mary@epa.gov>
Cc: McGill, Thomas <McGill.Thomas@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov>
Subject: Talking points and background for the 404 briefing

Secretary of FDEP - Noah Valenstein. The new secretary has a broad base of experience which will help as the state goes through the assumption process. He has been the legislative director for Governor Scott, the Executive Director of the Suwannee Water Management District (which has many agricultural issues and the largest concentration of natural springs). He was also the legislative director for the Everglades Foundation,

which serves as an “umbrella” for all the major environmental groups in Florida involved in Everglades restoration.

Funding issues – The FDEP gets its funding through the legislative process. Whether there are adequate funds to support this program assumption could be addressed through an appropriation. For the WMDs, they are ad valorem taxing districts and raise revenue through taxes on water usage. The three larger WMDs (South Florida, Southwest Florida and St. Johns) have higher millage rates than Northwest and Suwannee. However, Funding should not be an issue.

Staffing – since the state currently implements the ERP program, they have staff currently assigned to this effort. Whether is adequate staffing will depend on how the current workload compares to the future workload, but can be addressed.

We are assuming the state will use the Environmental Resource Permitting program (ERP). The permit responsibility is divided up between the FDEP District offices and the Five Water Management Districts depending on the activity. Under the 40 CFR Part 233 assumption regulations, if more than one entity in the state is responsible for implementing the Section 404 program, the director or head of each involved agency will need to sign the MOUs with the COE and the EPA. It is not clear whether each FDEP district office or the Secretary will need to sign.

ERP - Who Does What?

All Environmental Resource Program (ERP) permitting and state-owned submerged lands authorizations are now done in the district offices of the Department and in the St. Johns River, Suwannee River, Northwest Florida, South Florida, and Southwest Florida Water Management Districts. Operating Agreements between the Department and the water management districts spell out which agency will process any given application. Under those agreements, **the Department generally reviews and takes actions on applications involving:**

- Solid waste, hazardous waste, domestic waste, and industrial waste facilities
- Mining (except borrow pits that do not involve on-site material grading or sorting)
- Power plants, transmission and communication cables and lines, and natural gas and petroleum exploration, production, and distribution lines and facilities
- Docking facilities and attendant structures and dredging that are not part of a larger plan of residential or commercial development
- Navigational dredging conducted by governmental entities, except when part of a larger project that a WMD has the responsibility to permit
- Systems serving only one single-family dwelling unit or residential unit not part of a larger common plan of development
- Systems located in whole or in part seaward of the coastal construction control line
- Seaports, and
- Smaller, separate water-related activities not part of a larger plan of development (such as boat ramps, mooring buoys, and artificial reefs)

The water management districts review and take action on all the other ERP applications. Staff of the Department and the districts will be happy to help applicants determine the appropriate agency for an application.

Dredge and Fill Fact Sheet

What is Dredge and Fill?

Dredging means excavation in wetlands or other surface waters or excavation in uplands that creates wetlands or other surface waters. Filling means deposition of any material (such as sand, dock pilings, or seawalls) in wetlands or other surface waters.

The surface waters regulated under the dredge and fill program include bays, bayous, sounds, estuaries, lagoons, rivers, streams, the Gulf of Mexico, the Atlantic Ocean, most natural lakes, and all waters and wetlands (natural or artificial).

Why are dredge and fill activities regulated?

Dredging and filling in the surface waters of Florida has been regulated since the early 1970's. This program was established under Chapter 403, F.S., to protect our surface waters from degradation caused by the loss of wetlands and from pollution caused by construction activities.

Alteration of wetlands and other surface waters may have a detrimental impact on the environment. That impact could extend beyond the limits of the work site, affecting other public or private property. Polluted waters can be conveyed off-site through connecting waterbodies. The elimination or degradation of wetlands will cause a reduction of beneficial functions provided by the wetlands.

Wetlands provide a number of important and beneficial functions. During periods of heavy rainfall, wetlands serve as flood storage areas, where water can spread out without damage to developed uplands. As the water passes through the wetlands, pollutants are filtered out. Wetlands also stabilize shorelines, thereby preventing the harmful effects of erosion. Wetlands produce the basic food material used by many fish and other aquatic life. Some wetlands also serve as nursery grounds for fish and rookery areas for birds. Many wildlife species, some of which are threatened or endangered, need to live in wetlands for all or part of their life.

Filling wetlands can increase on-site and off-site flooding. Dredging and filling can also degrade the quality of water during and after construction, and can reduce the populations of fish and wildlife. In fact, it has been estimated that as much as 80% of our recreationally and commercially important fish species are dependent upon wetlands for at least some portion of their life cycle.

How is dredging and filling regulated?

The dredge and fill permit program is implemented by the Department and five water management districts (Northwest Florida, Suwannee River, St. Johns River, Southwest Florida, and South Florida). Dredging and filling also is regulated by the federal government under a separate program administered by the U.S. Army Corps of Engineers (Corps). The process is initiated by submitting a joint (interagency) application to the Department or to one of the above water management districts (Districts). The appropriate agency is determined by a division of responsibilities specified in Operating Agreements between the agencies. Upon receipt of the application by the Department or District, a copy also is forwarded to the Corps to initiate the federal permitting process.

Streamlining

The state has phased out the dredge and fill permit program by combining it with the management and storage of surface water (MSSW) permit program of the Districts creating a new environmental resource permit (ERP) program under Part IV of Chapter 373 of the Florida Statutes. The dredge and fill program described above will remain in place only within the limits of the Northwest Florida Water Management District (NFWFMD) for permitted activities or applications deemed complete before November 1, 2010, and for certain grandfathered activities in the rest of the state. The ERP program is in effect throughout the state. The ERP program regulates dredging and filling in all wetlands and other surface waters, and also regulates the aspects of the MSSW program such as water quantity (flooding) and water quality (stormwater) in both wetlands and uplands.

Sovereign Submerged Land Approvals and the ERP Program

In addition to the regulatory (permit) program discussed above, permission to use any sovereign (state-owned) submerged lands must also be addressed in the review process. For activities located on sovereign submerged

lands, the application to use these areas (known as the proprietary authorization) will be reviewed in conjunction with the regulatory application. Both forms of authorization will be requested in the same application, and will be reviewed and granted or denied at the same time. This linkage will streamline the review of the state regulatory and proprietary authorizations statewide for both the Department and the WMDs, except within the NFWMD.

Future Permit Streamlining Initiatives

To further streamline the above programs, the Department and the WMDs are developing rules to allow us to delegate the ERP program to qualified local governments. All regulatory authorizations under the ERP program, as well as any additional local permits, will be granted or denied at the same time by the local government once they are granted delegation. The Department and WMDs are also working with the Corps to reduce overlap in state and federal regulatory permits. Until the local and federal programs are fully linked with the WR and ERP programs described above, applicants are advised to work with, and obtain all needed authorizations from, all of these agencies prior to dredging and filling in wetlands or other surface waters.

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